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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	CC Docket No. 96-128

OPPOSITION OF AMERITECH TO TELCO COMMUNICATIONS GROUP'S PETITION FOR WAIVER

ALAN N. BAKER
Attorney for Ameritech
2000 West Ameritech Center Drive
Hoffman Estates IL 60196
(847) 248-4876

June 3, 1997

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Pursuant to the Public Notice, DA-97-943, released May 13, 1997, Ameritech hereby comments in opposition to the Petition for Waiver filed March 24, 1887, by Telco Communications Group, Inc. ("Telco") seeking a waiver to allow Telco to begin pay compensation to payphone owners under Section 276 of the Telecommunications Act at the rate of 35 cents per call, instead of on the basis of Telco's proportionate share of the $45.85 total compensation per payphone per month that is currently required by Sec. 64.1301 of the Rules.[1]

[1] *See In re* Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket
(Footnote Continued . . .)

Telco's Petition should be denied. First of all, although the Petition tries to maintain the pretense that Telco is merely responding to an express invitation from the Commission to ask for a waiver in these circumstances, that is not true at all, because Telco's case does not fit the facts that the Commission had in mind. In Paragraph 129 of the Reconsideration Order, which Telco itself cites in its Petition, what the Commission said was:

> Individual carrier-payors and the PSPs have the option, however, of mutually agreeing to pay per-call compensation for all or a portion of a particular carrier's share of the interim flat rate. Such a carrier-payor would have to petition us for waiver and receive an approval before implementing such an arrangement.

Telco has not "mutually agreed" with Ameritech in regard to per-call compensation at Ameritech's payphones during the interim flat-rate compensation period, nor has it even approached Ameritech seeking to negotiate such an agreement. In fact, as the Public Notice pointedly observed (p. 2 n.7), Telco's Petition does not allege that it has reached such an agreement with *any* owner of pay telephones. Thus Telco is plainly not within the class of cases that were potentially

(Footnote Continued . . .)

No. 96-128, *Report and Order*, FCC 96-388 (released Sept. 20, 1996) [hereinafter "Payphone Order"], *on reconsideration,* FCC 96-439 (Nov. 8, 1996) ["Reconsideration Order"], *Order,* DA 97-678 (Common Carrier Bureau Apr. 4, 1997), *Order,* DA 97-805 (Common Carrier Bureau Apr. 15, 1997).

thought worthy of a waiver in the Reconsideration Order, and its efforts to pretend otherwise should be fatal to its Petition.

In fact, what Telco seeks is not a waiver at all, but an outright change in the rules to allow interexchange carriers to pay 35 cents per call even *without* the agreement of the payphone owner. Such a change was prominently proposed, but decidedly rejected, at the time of the Reconsideration Order. There the Commission said emphatically (at ¶ 129):

> To ensure a relatively easy administration for all parties and to allow them to prepare for the per-call mechanism, we decline to modify our rules to require some IXCs to pay per-call compensation for all or some calls under the interim compensation mechanism. We conclude that the requested modification would impose greater transaction costs for all parties that outweigh its benefits, particularly because the flat-rate compensation mechanism is a interim mechanism that is scheduled to terminate in one year.

Nothing in Telco's Petition is sufficient to require a different result this time. Telco asserts (p. 4) that it is "patently unfair" to require it to pay the flat-rate compensation, but it offers no reason why it would not be *equally* unfair to *reduce* the total compensation of payphone owners by an amount equal to the savings that would be realized by Telco. As discussed in the September 20 Payphone Order, at ¶¶ 124–126, the overall flat-rate compensation for each payphone was based on an estimate of its *total* number of dial-around and "800" calls. If there were fewer Telco calls among them than one might expect, that does not affect the accuracy of that total. Thus the only logical way to allow Telco to pay *less* would be to require other carriers to pay *more*, but of course that is not the form of relief that Telco is seeking in its waiver petition.

Moreover, it is ironic that although Telco claims to deserve its waiver on account of its technological prowess in being able to track payphone calls, the economic burden of its proposed waiver would unjustifiably be borne by payphone owners, rather than by Telco's interexchange carrier rivals, notwithstanding the latter's supposedly less advanced technology. In addition, of course, such a waiver, if granted, would soon be followed by others seeking the same relief as interexchange carriers develop tracking capabilities (as indeed they must do to prepare for the next phase of the compensation plan). Naturally the only carriers who would seek such a waiver would be those who — like Telco — have the ability to track calls *and* who calculate that they would pay less with a waiver than otherwise. Thus there would only be subtractions for payphone owners, with no offsetting additions, even though it is surely not they who are to blame for the lack of tracking ability on the part of certain interexchange carriers.

Section 276 invests the Commission with the weighty responsibility of devising and implementing, within the brisk time limits Congress has prescribed, a comprehensive, wholly new plan for payphone compensation. The three-stage transitional plan the Commission has developed — which Telco smugly calls a "scheme" (p. 5) — reasonably accommodates the divergent needs and capabilities of the various LEC and non-LEC payphone owners, as well as interexchange carriers of all shapes and sizes, and deviations from the plan's interim uniformity should be granted only under extraordinary circumstances. Telco's Petition falls far short of showing the Commission such circumstances, and accordingly that Petition should be denied.

Respectfully submitted,

Alan Baker

ALAN N. BAKER
Attorney for Ameritech
2000 West Ameritech Center Drive
Hoffman Estates IL 60196
(847) 248-4876

June 3, 1997

PROOF OF SERVICE

I hereby certify that on this 3rd day of June, 1997, the foregoing Opposition of Ameritech to Telco Communications Group's Petition for Waiver was served by depositing copies thereof in the U.S. Mail at Hoffman Estates, Illinois, addressed to each person shown on the following list.

Edith Smith

Dana Frix
Pamela S. Arluk
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007